



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

US EPA RECORDS CENTER REGION 5



498115

REPLY TO THE ATTENTION OF:

CS-3T

June 3, 1994

via Telecopier and Certified Mail

Mr. Scott Dennis  
WW Engineering & Science  
5555 Glenwood Hills Parkway SE  
P.O. Box 874  
Grand Rapids, MI 49588-0874

Re: U.S. v. The Selmer Company et al.

Dear Scott:

I am writing to you in connection with the Consent Decree entered in the above-entitled action. The United States Environmental Protection Agency ("U.S. EPA") has been apprised by Philips Electronics North American Corporation, The Selmer Company, and MacMillan, Inc. (the "Defendants") that all permits necessary to begin construction along Outer Drive in Elkhart, Indiana, pursuant to the terms of the above mentioned Consent Decree, have been obtained except a permit for the construction of a public water supply, which would be issued by the Indiana Department of Environmental Management ("IDEM").

Please be advised that the Defendants should continue their efforts to obtain the aforementioned permit from IDEM as soon as practicable. However, in the event that IDEM does not issue the Defendants such permit prior to the date by which the Defendants are prepared to commence construction, the Defendants should proceed with construction notwithstanding the lack of the IDEM permit. U.S. EPA will not consider such construction to be violative of the terms of Paragraph IV.6 of the Consent Decree.

Under Section 121(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA") 42 U.S.C. § 9621(e)(1), state permit requirements otherwise applicable, shall not be required for "...the portion of any removal or remedial action conducted entirely onsite..." 42 U.S.C. § 9621(e)(1). Because the residential wells at issue along Outer Drive have been impacted by contamination emanating from the Selmer Company facility, and because CERCLA defines "facility" to include "any site or area where a hazardous substance has been deposited,...or otherwise come to be located",

(see CERCLA Section 101(9)(B), 42 U.S.C. § 9601(9)(B)) U.S. EPA takes the position that the work in question is work to be done "onsite" and, accordingly, the IDEM permit at issue is not a "required" permit as that term is meant in the Consent Decree.

As a matter of comity to the State of Indiana, to the extent IDEM wishes to issue such permit, the Defendants should comply with IDEM's wishes.

Should you have any questions or comments regarding this matter, please contact me immediately. However, please be advised that I will be out of the office from June 6, 1994 through June 10, 1994. I will return to the office on June 13th. U.S. EPA expects that the Defendants will meet the remaining requirements of the Consent Decree as expeditiously as possible.

Sincerely,



Alan I. Lewis  
Law Clerk

cc: Kenneth Theisen - U.S. EPA  
Elizabeth Murphy, Esq. - U.S. EPA  
Michelle Perez, Esq. - Philips Electronics North American  
Craig Zimmerman, Esq. - MacMillan, Inc.  
James V. Woodsmall, Esq. - The Selmer Company